

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
NON-INFORMATION TECHNOLOGY GOODS
TERMS AND CONDITIONS
GENERAL PROVISIONS**

1. Definitions

The following terms shall be given the meaning shown, unless context requires otherwise or a unique meaning is otherwise specified.

- a) **"Business entity"** means any individual, business, partnership, joint venture, corporation, S-corporation, limited liability corporation, limited liability partnership, sole proprietorship, joint stock company, consortium, or other private legal entity recognized by statute.
- b) **"Buyer"** means the State's authorized contracting official.
- c) **"Contract"** means the purchase order, contract and/or agreement, by whatever name known or in whatever format used.
- d) **"Contractor"** means the business entity with which the State enters into a contract. Contractor shall be synonymous with "supplier," "vendor" or other similar term.
- e) **"Goods"** means all types of tangible personal property, including but not limited to materials, supplies, equipment ("commodities"), and information and telecommunication technology.
- f) **"State"** means the State of California, its employees and authorized representatives.

2. CMAS Payee Data Record

Each contractor doing business with the State of California must indicate their residency status along with their vendor identification number. Contractors are required to provide a completed Payee Data Record, Std. 204, to the DGS Procurement Division before entering into this contract.

3. Complete Integration

This contract, including any documents incorporated herein by express reference, is intended to be a complete integration and there are no prior or contemporaneous different or additional agreements pertaining to the subject matter of the contract.

4. Severability

The contractor and the State agree that if any provision of this contract is found to be illegal or unenforceable, such term or provision shall be deemed stricken and the remainder of the contract shall remain in full force and effect. Either party having knowledge of such term or provision shall promptly inform the other of the presumed non-applicability of such provision.

5. Independent Contractor

Contractor and the agents and employees of contractor, in the performance of this contract, shall act in an independent capacity and not as officers or employees or agents of the State.

6. Applicable Law

This contract shall be governed by and shall be interpreted in accordance with the laws of the State of California; venue of any action brought with regard to this contract shall be in Sacramento County, Sacramento, California. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this contract.

7. Compliance with Statutes and Regulations

- a) Contractor warrants and certifies that in the performance of this contract, it will comply with all applicable statutes, rules, regulations and orders of the United States and the State of California and agrees to indemnify the State against any loss, cost, damage or liability by reason of contractor's violation of this provision.
- b) If this contract is in excess of \$500,000, it is subject to the requirements of the World Trade Organization (WTO) Government Procurement Agreement (GPA).

8. Contractor's Power and Authority

The contractor warrants that it has full power and authority to grant the rights herein granted and will hold the State harmless from and against any loss, cost, liability, and expense (including reasonable attorney fees) arising out of any breach of this warranty. Further, contractor avers that it will not enter into any arrangement with any third party that might abridge any rights of the State under this contract.

9. CMAS Assignment

This contract shall not be assignable by the contractor in whole or in part without the written consent of the State. For the purpose of this paragraph, State will not unreasonably prohibit contractor from freely assigning its right to payment, provided that contractor remains responsible for its obligations hereunder.

Should the State desire financing of the assets provided hereunder through GS \$Mart, the State's financial marketplace, the contractor agrees to assign to a State-designated lender its right to receive payment from the State for the assets in exchange for payment by the lender of the cash purchase price for the assets. Upon notice to do so from the State-designated lender at any time prior to payment by the State for the assets, the contractor will execute and deliver to the State-designated lender an assignment agreement and any additional documents necessary for the State selected financing plan. The State-designated lender will pay the contractor according to the terms of the contractor's invoice upon acceptance of the assets by the State.

10. Waiver of Rights

Any action or inaction by the State or the failure of the State on any occasion, to enforce any right or provision of the contract, shall not be construed to be a waiver by the State of its rights hereunder and shall not prevent the State from enforcing such provision or right on any future occasion. The rights and remedies of the State herein are cumulative and are in addition to any other rights or remedies that the State may have at law or in equity.

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11. Order of Precedence

In the event of any inconsistency between the articles, attachments, specifications or provisions that constitute this contract, the following order of precedence shall apply:

- a) Contract form, i.e., Purchase Order, Standard Agreement, etc., and any amendments thereto;
- c) Specifications/Statement of Work;
- d) Special terms and conditions;
- e) General terms and conditions, including these General Provisions; and
- f) All other attachments incorporated herein by reference.

The specifications shall prevail over any subsidiary documents referenced therein.

12. Packing and Shipping

- a) All goods are to be packed in suitable containers for protection in shipment and storage, and in accordance with applicable specifications. Each container of a multiple container shipment shall be identified to:
 - i) Show the number of the container and the total number of containers in the shipment; and
 - ii) Show the number of the container in which the packing sheet has been enclosed.
- b) All shipments by contractor or its subcontractors must include packing sheets identifying: the State's contract number; item number; quantity and unit of measure; part number and description of the goods shipped; and appropriate evidence of inspection, if required. Goods for different contracts shall be listed on separate packing sheets.
- c) Shipments must be made as specified in this contract, as it may be amended, or otherwise directed in writing by the State's Transportation Management Unit within the Department of General Services, Procurement Division.

13. Transportation Costs and Other Fees or Expenses

No charge for delivery, drayage, express, parcel post, packing, cartage, insurance, license fees, permits, cost of bonds, or for any other purpose will be paid by the State unless expressly included and itemized in the contract.

- a) Contractor must strictly follow contract requirements regarding Free on Board (F.O.B.), freight terms, and routing instructions. The State may permit use of an alternate carrier at no additional cost to the State with advance written authorization of the buyer.
- b) If "prepay and add" is selected, supporting freight bills are required when over \$50, unless the Transportation Management Unit within the Department of General Services Procurement Division approves an exact freight charge and a waiver is granted.

- c) On "F.O.B. Shipping Point" transactions, should any shipments under the contract be received by the State in a damaged condition and any related freight loss and damage claims filed against the carrier or carriers be wholly or partially declined by the carrier or carriers with the inference that damage was the result of the act of the shipper such as inadequate packaging or loading or some inherent defect in the equipment and/or material, contractor, on request of the State, shall at contractor's own expense assist the State in establishing carrier liability by supplying evidence that the equipment and/or material was properly constructed, manufactured, packaged, and secured to withstand normal transportation conditions.

14. Time is of the Essence

Time is of the essence in this contract.

15. Delivery

Contractor shall strictly adhere to the delivery and completion schedules specified in the purchase order. Time, if stated as a number of days, shall mean calendar days unless otherwise specified. The quantities specified herein are the only quantities required. If contractor delivers in excess of the quantities specified herein, the State shall not be required to make any payment for the excess goods, and may return them to contractor at contractor's expense or utilize any other rights available to the State at law or in equity.

16. Substitutions

Substitution of goods may not be tendered without advance written consent of the buyer. Contractor shall not use any specification in lieu of those contained in the contract without written consent of the buyer.

17. Inspection, Acceptance and Rejection

- a) Contractor and its subcontractors will provide and maintain a quality assurance system acceptable to the State covering goods and services under this contract and will tender to the State only those goods that have been inspected and found to conform to this contract's requirements. Contractor will keep records evidencing inspections and their result, and will make these records available to the State during contract performance and for three years after final payment. Contractor shall permit the State to review procedures, practices, processes and related documents to determine the acceptability of contractor's quality assurance system or other business practices related to performance of the contract.
- b) All goods may be subject to inspection and test by the State or its authorized representatives.
- c) Contractor and its subcontractors shall provide all reasonable facilities for the safety and convenience of inspectors at no additional cost to the State. Contractor shall furnish to inspectors all information and data as may be reasonably required to perform their inspection.
- d) All goods to be delivered hereunder may be subject to final inspection, test, and acceptance by the State at destination, notwithstanding any payment or inspection at source.

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- e) The State shall give notice of rejection of goods delivered or services performed hereunder within a reasonable time after receipt of such goods or performance of such services. Acceptance by the State shall not waive any rights that the State might otherwise have at law or by express reservation in this contract with respect to any nonconformity.

18. Samples

- a) Samples of items may be required by the State for inspection and specification testing and must be furnished free of expense to the State. The samples furnished must be identical in all respects to the products quoted and/or specified in the contract.
- b) Samples, if not destroyed by tests, may, upon request made at the time the sample is furnished, be returned at contractor's expense.

19. CMAS Warranty

The following warranty language is in addition to the warranty language provided in the federal GSA Multiple Award Schedule or other base contract used to establish this CMAS contract. When there is a conflict between the following warranty language and the warranty language provided in the federal GSA Multiple Award Schedule or other base contract used to establish this CMAS contract, the following warranty language overrides. Unless otherwise specified, the warranties contained in this contract begin after acceptance has occurred.

- a) Contractor warrants that goods and services furnished hereunder will conform to the requirements of this contract (including all descriptions, specifications and drawings made a part hereof), and such goods will be merchantable, fit for their intended purposes, free from all defects in materials and workmanship and to the extent not manufactured pursuant to detailed designs furnished by the State, free from defects in design. The State's approval of designs or specifications furnished by contractor shall not relieve the contractor of its obligations under this warranty.
- b) All warranties, including special warranties specified elsewhere herein, shall inure to the State, its successors, assigns, customer agencies, and users of the goods or services.

20. Safety and Accident Prevention

In performing work under this contract on State premises, contractor shall conform to any specific safety requirements contained in the contract or as required by law or regulation. Contractor shall take any additional precautions as the State may reasonably require for safety and accident prevention purposes. Any violation of such rules and requirements, unless promptly corrected, shall be grounds for termination of this contract in accordance with the default provisions hereof.

21. Insurance

When performing work on property in the care, custody, or control of the State, contractor shall maintain all commercial general liability insurance, workers' compensation insurance and any other insurance the State deems appropriate under the contract. Contractor shall furnish an insurance certificate evidencing required insurance coverage acceptable to the State. Upon request by the buyer, the contractor may be required to have the State shown as an "additional insured" on selected policies.

22. Termination for Non-Appropriation of Funds

- a) If the term of the purchase order extends into fiscal years subsequent to that in which it is approved, such continuation of the purchase order is contingent on the appropriation of funds for such purpose by the Legislature. If funds to effect such continued payment are not appropriated, contractor agrees to take back any affected goods furnished under the purchase order, terminate any services supplied to the State under the purchase order, and relieve the State of any further obligation therefor.
- b) State agrees that if paragraph a) above is invoked, goods shall be returned to the contractor in substantially the same condition in which delivered to the State, subject to normal wear and tear. State further agrees to pay for packing, crating, transportation to contractor's nearest facility and for reimbursement to the contractor for expenses incurred for their assistance in such packing and crating.

23. Termination for the Convenience of the State

- a) The State may terminate performance of work under the purchase order for its convenience in whole or, from time to time, in part, if the Department of General Services, Deputy Director, Procurement Division, or designee, determines that a termination is in the State's interest. The Department of General Services, Deputy Director, Procurement Division, or designee, shall terminate by delivering to the contractor a Notice of Termination specifying the extent of termination and the effective date thereof. The parties agree that, as to the terminated portion of the purchase order, the purchase order shall be deemed to remain in effect until such time as the termination settlement, if any, is concluded and the purchase order shall not be void.
- b) After receipt of a Notice of Termination, and except as directed by the State, the contractor shall immediately proceed with the following obligations, as applicable, regardless of any delay in determining or adjusting any amounts due under this clause.

The contractor shall:

- i) Stop work as specified in the Notice of Termination.
- ii) Place no further subcontracts for materials, services, or facilities, except as necessary to complete the continued portion of the purchase order.
- iii) Terminate all subcontracts to the extent they relate to the work terminated.
- iv) Settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts (the approval or ratification of which will be final for purposes of this clause).

24. Termination for Default

- a) The State may, subject to the Force Majeure paragraph contained herein, by written notice of default to the contractor, terminate the purchase order in whole or in part if the contractor fails to:
 - i) Deliver the goods or to perform the services within the time specified in the purchase order or any amendment thereto.
 - ii) Make progress; so as to endanger performance of the purchase order (see subparagraph (b) below).
 - iii) Perform any of the other provisions of the purchase order (see subparagraph (b), below).

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- b) The State's right to terminate the purchase order under subparagraph (a)(ii) and (a)(iii) above, may be exercised if the contractor does not cure such failure within the time frame stated in the cure notice issued by the buyer.
- c) If the State terminates the purchase order in whole or in part, it may acquire, under the terms and in the manner the buyer considers appropriate, goods or services similar to those terminated, and the contractor will be liable to the State for any excess costs for those goods or services. However, the contractor shall continue the work not terminated.
- d) If the purchase order is terminated for default, the State may require the contractor to transfer title and deliver to the State, as directed by the buyer, any:
 - i) Completed goods, and
 - ii) Partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as "manufacturing materials" in this clause) that the contractor has specifically produced or acquired for the terminated portion of the purchase order. Upon direction of the buyer, the contractor shall also protect and preserve property in its possession in which the State has an interest.
- e) The State shall pay contract price for completed goods delivered and accepted. The contractor and buyer shall agree on the amount of payment for manufacturing materials delivered and accepted for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. The State may withhold from these amounts any sum the buyer determines to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders.
- f) The rights and remedies of the State in this clause are in addition to any other rights and remedies provided by law or under this contract.

25. Force Majeure

Except for defaults of subcontractors at any tier, the contractor shall not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the contractor. Examples of such causes include, but are not limited to:

- a) Acts of God or of the public enemy, and
- b) Acts of the federal or state government in either its sovereign or contractual capacity.

If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the contractor and subcontractor, and without the fault or negligence of either, the contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted goods or services were obtainable from other sources in sufficient time for the contractor to meet the required delivery schedule.

26. Rights and Remedies of State for Default

- a) In the event any goods furnished or services provided by the contractor in the performance of the contract should fail to conform to the requirements herein, or to the sample submitted by the contractor, the State may reject the same, and it shall become the duty of the contractor to reclaim and remove the item promptly or to correct the performance of services, without expense to the State, and immediately replace all such rejected items with others conforming to the contract.
- b) In addition to any other rights and remedies the State may have, the State may require contractor, at contractor's expense, to ship goods via air freight or expedited routing to avoid or minimize actual or potential delay if the delay is the fault of the contractor.
- c) In the event of the termination of the contract, either in whole or in part, by reason of default or breach by the contractor, any loss or damage sustained by the State in procuring any items that the contractor agreed to supply shall be borne and paid for by the contractor.
- d) The State reserves the right to offset the reasonable cost of all damages caused to the State against any outstanding invoices or amounts owed to contractor or to make a claim against the contractor therefore.

27. Contractor's Liability for Injury to Persons or Damage to Property

- a) The contractor shall be liable for damages arising out of injury to the person and/or damage to the property of the State, employees of the State, persons designated by the State for training, or any other person(s) other than agents or employees of the contractor, designated by the State for any purpose, prior to, during, or subsequent to delivery, installation, acceptance, and use of the goods either at the contractor's site or at the State's place of business, provided that the injury or damage was caused by the fault or negligence of the contractor.
- b) Contractor shall not be liable for damages arising out of or caused by an alteration or an attachment not made or installed by the contractor, or for damage to alterations or attachments that may result from the normal operation and maintenance of the goods provided by the contractor during the contract.

28. Indemnification

Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers and any other person, firm, or corporation furnishing or supplying work, services, materials or supplies in connection with the performance of this contract, and from any and all claims and losses accruing or resulting to any person, firm or corporation which may be injured or damaged by contractor in the performance of this contract.

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29. Invoices

Unless otherwise specified, invoices shall be sent to the address set forth in the purchase order. Invoices shall be submitted in triplicate and shall include the contract number; release order number (if applicable); item number; unit price, extended item price and invoice total amount. State sales tax and/or use tax shall be itemized separately and added to each invoice as applicable.

30. Required Payment Date

Payment will be made in accordance with the provisions of the California Prompt Payment Act, Government Code Section 927 et. seq. Unless expressly exempted by statute, the Act requires state agencies to pay properly submitted, undisputed invoices not more than 45 days after (i) the date of acceptance of goods or performance of services; or (ii) receipt of an undisputed invoice, whichever is later.

31. Taxes

Unless otherwise required by law, the State of California is exempt from Federal excise taxes. The State will only pay for any State or local sales or use taxes on the services rendered or goods supplied to the State pursuant to this contract.

32. Newly Manufactured Goods

All goods furnished under this contract shall be newly manufactured goods; used or reconditioned goods are prohibited, unless otherwise specified.

33. Contract Modification

No amendment or variation of the terms of this contract shall be valid unless made in writing, and approved as required. No oral understanding or agreement not incorporated in the contract is binding on any of the parties.

34. Confidentiality of Data

All financial, statistical, personal, technical and other data and information relating to the State's operation which are designated confidential by the State and made available to the contractor in order to carry out this contract, or which become available to the contractor in carrying out this contract, shall be protected by the contractor from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to the State. The identification of all such confidential data and information as well as the State's procedural requirements for protection of such data and information from unauthorized use and disclosure shall be provided by the State in writing to the contractor. If the methods and procedures employed by the contractor for the protection of the contractor's data and information are deemed by the State to be adequate for the protection of the State's confidential information, such methods and procedures may be used, with the written consent of the State, to carry out the intent of this paragraph. The contractor shall not be required under the provisions of this paragraph to keep confidential any data or information that is or becomes publicly available, is already rightfully in the contractor's possession, is independently developed by the contractor outside the scope of this contract, or is rightfully obtained from third parties.

35. News Releases

Unless otherwise exempted, news releases pertaining to this contract shall not be made without prior written approval of the Department of General Services.

36. Patent, Copyright and Trade Secret Indemnity

- a) Contractor shall hold the State of California, its officers, agents and employees, harmless from liability of any nature or kind, including costs and expenses, for infringement or use of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or used in connection with the contract.
- b) Contractor may be required to furnish a bond to the State against any and all loss, damage, costs, expenses, claims, and liability for patent, copyright, and trade secret infringement.
- c) Contractor, at its own expense, shall defend any action brought against the State to the extent that such action is based upon a claim that the goods or software supplied by the contractor or the operation of such goods pursuant to a current version of contractor supplied operating software infringes a United States patent or copyright or violates a trade secret. The contractor shall pay those costs and damages finally awarded against the State in any such action. Such defense and payment shall be conditioned on the following:
 - i) That the contractor shall be notified within a reasonable time in writing by the State of any notice of such claim; and,
 - iii) That the contractor shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise, provided, however, that when principles of government or public law are involved, the State shall have the option to participate in such action at its own expense.
- c) Should the goods or software, or the operation thereof, become, or in the contractor's opinion are likely to become, the subject of a claim of infringement of a United States patent or copyright or a trade secret, the State shall permit the contractor at its option and expense either to procure for the State the right to continue using the goods or software, or to replace or modify the same so that they become non-infringing. If none of these options can reasonably be taken, or if the use of such goods or software by the State shall be prevented by injunction, the contractor agrees to take back such goods or software and make every reasonable effort to assist the State in procuring substitute goods or software. If, in the sole opinion of the State, the return of such infringing goods or software makes the retention of other goods or software acquired from the contractor under this contract impractical, the State shall then have the option of terminating such contracts, or applicable portions thereof, without penalty or termination charge. The contractor agrees to take back such goods or software and refund any sums the State has paid contractor less any reasonable amount for use or damage.

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- e) The contractor shall have no liability to the State under any provision of this clause with respect to any claim of patent, copyright, or trade secret infringement that is based upon:
 - i) The combination or utilization of goods furnished hereunder with equipment or devices not made or furnished by the contractor; or,
 - ii) The operation of equipment furnished by the contractor under the control of any operating software other than, or in addition to, the current version of contractor-supplied operating software; or
 - iii) The modification by the State of the equipment furnished hereunder or of the software; or
 - iv) The combination or utilization of software furnished hereunder with non-contractor supplied software.
- e) Contractor certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this contract for the acquisition, operation or maintenance of computer software in violation of copyright laws.
- g) The foregoing states the entire liability of the contractor to the State with respect to infringement of patents, copyrights or trade secrets.
- b) Pending the final resolution of any dispute arising under, related to or involving this contract, contractor agrees to diligently proceed with the performance of this contract, including the delivery of goods or providing of services in accordance with the State's instructions. Contractor's failure to diligently proceed in accordance with the State's instructions shall be considered a material breach of this contract.
- c) Any final decision of the State shall be expressly identified as such, shall be in writing, and shall be signed by the Department Director or designee or Deputy Director, Procurement Division if an appeal was made. If the State fails to render a final decision within 90 days after receipt of contractor's demand, it shall be deemed a final decision adverse to contractor's contentions. The State's final decision shall be conclusive and binding regarding the dispute unless contractor commences an action in a court of competent jurisdiction to contest such decision within 90 days following the date of the final decision or one (1) year following the accrual of the cause of action, whichever is later.

39. Stop Work

- a) The State may, at any time, by written Stop Work Order to the contractor, require the contractor to stop all, or any part, of the work called for by this contract for a period up to 90 days after the Stop Work Order is delivered to the contractor, and for any further period to which the parties may agree. The Stop Work Order shall be specifically identified as such and shall indicate it is issued under this clause. Upon receipt of the Stop Work Order, the contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the Stop Work Order during the period of work stoppage. Within a period of 90 days after a Stop Work Order is delivered to the contractor, or within any extension of that period to which the parties shall have agreed, the State shall either:
 - i) Cancel the Stop Work Order; or
 - ii) Terminate the work covered by the Stop Work Order as provided for in the termination for default or the termination for convenience clause of this contract.
- b) If a Stop Work Order issued under this clause is canceled or the period of the Stop Work Order or any extension thereof expires, the contractor shall resume work. The State shall make an equitable adjustment in the delivery schedule, the contract price, or both, and the contract shall be modified, in writing, accordingly, if:
 - i) The Stop Work Order results in an increase in the time required for, or in the contractor's cost properly allocable to the performance of any part of this contract; and
 - ii) The contractor asserts its right to an equitable adjustment within 30 days after the end of the period of work stoppage; provided, that if the State decides the facts justify the action, the State may receive and act upon a proposal submitted at any time before final payment under this contract.

37. Examination and Audit

Contractor agrees that the State or its designated representative shall have the right to review and copy any records and supporting documentation pertaining to performance of this contract. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of record retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees or others who might reasonably have information related to such records. Further, contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this contract.

38. Disputes

- a) The parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute persists, contractor shall submit to the Department Director or designee a written demand for a final decision regarding the disposition of any dispute between the parties arising under, related to or involving this contract, unless the State, on its own initiative, has already rendered such a final decision. Contractor's written demand shall be fully supported by factual information, and if such demand involves a cost adjustment to the contract, contractor shall include with the demand a written statement signed by an authorized person indicating that the demand is made in good faith, that the supporting data are accurate and complete and that the amount requested accurately reflects the contract adjustment for which contractor believes the State is liable. If the contractor is not satisfied with the decision of the Department Director or designee, the contractor may appeal the decision to the Department of General Services, Deputy Director, Procurement Division. In the event that this contract is for information technology goods and/or services, the decision may be appealed to an Executive Committee of State and contractor personnel.

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- c) If a Stop Work Order is not canceled and the work covered by the Stop Work Order is terminated in accordance with the provision entitled Termination for the Convenience of the State, the State shall allow reasonable costs resulting from the Stop Work Order in arriving at the termination settlement.
- d) The State shall not be liable to the contractor for loss of profits because of a Stop Work Order issued under this clause.

40. Priority Hiring Considerations

If this contract includes services in excess of \$200,000, the contractor shall give priority consideration in filling vacancies in positions funded by the contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with PCC Section 10353.

41. Covenant Against Gratuities

The contractor warrants that no gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the contractor, or any agent or representative of the contractor, to any officer or employee of the State with a view toward securing the contract or securing favorable treatment with respect to any determinations concerning the performance of the contract. For breach or violation of this warranty, the State shall have the right to terminate the contract, either in whole or in part, and any loss or damage sustained by the State in procuring on the open market any items which contractor agreed to supply shall be borne and paid for by the contractor. The rights and remedies of the State provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or in equity.

42. Nondiscrimination Clause

- a) During the performance of this contract, contractor and its subcontractors shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, sexual orientation, race, color, ancestry, religious creed, national origin, disability (including HIV and AIDS), medical condition (cancer), age, marital status, and denial of family care leave. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12990 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this contract by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
- b) The contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the contract.

43. National Labor Relations Board Certification

Contractor swears under penalty of perjury that no more than one final, unappealable finding of contempt of court by a federal court has been issued against the contractor within the immediately preceding two-year period because of the contractor's failure to comply with an order of the National Labor Relations Board. This provision is required by, and shall be construed in accordance with, PCC Section 10296.

44. Assignment of Antitrust Actions

Pursuant to Government Code Sections 4552, 4553, and 4554, the following provisions are incorporated herein:

- a) In submitting a quote to the State, the supplier offers and agrees that if the quote is accepted, it will assign to the State all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. 15) or under the Cartwright Act (Chapter 2, commencing with Section 16700, of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, material, or services by the supplier for sale to the State pursuant to the solicitation. Such assignment shall be made and become effective at the time the State tenders final payment to the supplier.
- b) If the State receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the State any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the State as part of the quote price, less the expenses incurred in obtaining that portion of the recovery.
- c) Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and
 - i) The assignee has not been injured thereby, or
 - ii) The assignee declines to file a court action for the cause of action.

45. Drug-Free Workplace Certification

The contractor certifies under penalty of perjury under the laws of the State of California that the contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and will provide a drug-free workplace by taking the following actions:

- a) Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a).

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- b) Establish a Drug-Free Awareness Program as required by Government Code Section 8355(b) to inform employees about all of the following:
 - i) The dangers of drug abuse in the workplace.
 - ii) The person's or organization's policy of maintaining a drug-free workplace.
 - iii) Any available counseling, rehabilitation and employee assistance programs.
 - iv) Penalties that may be imposed upon employees for drug abuse violations.
- c) Provide, as required by Government Code Section 8355(c), that every employee who works on the proposed or resulting contract:
 - i) Will receive a copy of the company's drug-free policy statement; and,
 - ii) Will agree to abide by the terms of the company's statement as a condition of employment on the contract.

46. Year 2000 Compliance

Contractor warrants that it will provide only Year 2000 compliant products and/or services to the State in all present and future contracts and those Year 2000 compliant products and/or services meet the following requirements:

- a) For information technology goods and/or services, the contractor warrants and represents that the hardware, software and firmware goods and services delivered under this contract shall be able to accurately process date data (including, but not limited to, calculating, comparing, and/or sequencing) from, into and between the twentieth and twenty-first centuries, and the years 1999 and 2000 and leap year calculations to the extent that other information technology used in combination with the information technology being acquired, properly exchanges date data with it. This warranty and representation is subject to the warranty terms and conditions of this contract. Nothing in this warranty shall be construed to limit any rights or remedies the State may otherwise have under this contract with respect to defects other than Year 2000 performance.
- b) For non-information technology goods, the contractor warrants and represents that the goods delivered under this contract are "Year 2000 compliant." For purposes of this contract, a good is Year 2000 compliant if it will continue to function fully before, at and after the Year 2000 without interruption and, if applicable, with full ability to accurately and unambiguously process, display, compare, calculate, manipulate and otherwise utilize date information. This warranty and representation supersedes all warranty disclaimers and limitations and all limitations on liability provided by or through the contractor.
- c) Resellers must obtain written confirmation from the manufacturer that the goods and/or services are Year 2000 compliant, as defined above.

47. Forced, Convict and Indentured Labor

In accordance with PCC Section 6108, contractor warrants that no foreign-made equipment, materials, or supplies furnished to the State pursuant to this contract are produced in whole or in part by or with the benefit of, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor.

48. Recycling

Contractor hereby certifies under penalty of perjury that a percentage (0% to 100%) of the materials, goods, supplies offered, or products used in the performance of this contract meet or exceed the minimum percentage of recycled material as defined in PCC Sections 12161 and 12200.

49. Child Support Compliance Act

For any contract in excess of \$100,000, the contractor acknowledges in accordance with PCC Section 7110, that:

- a) The contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code; and
- b) The contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

50. Americans with Disabilities Act

Contractor assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. 12101 et seq.)

51. CMAS Contractor's License Requirements

Contracts that include installation or the wording "Furnish and Install" require at the time of contract award that contractors possess a valid California State Contractor's License. If sub-contractors are used, they must also possess a valid California State Contractor's License. All businesses which construct or alter any building, highway, road, parking facility, railroad, excavation, or other structure in California must be licensed by the California State License Board (CSLB) if the total cost (labor and materials) of the project is \$500.00 or more. Failure to be licensed or to keep the license current and in good standing shall be grounds for contract revocation.

52. CMAS Public Works Requirements (Applicable to Installation Only)

- a) Prior to the commencement of performance, the contractor must obtain and provide to the State, a payment bond, on Standard Form 807, when the contract involves a public works expenditure (labor/installation costs) in excess of \$5,000. Such bond shall be in a sum not less than one hundred percent (100%) of the contract price. Forms shall be provided to the contractor.

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b) In accordance with the provisions of Section 1773 of the California Labor Code, the contractor shall, conform and stipulates to the general prevailing rate of wages, including employer benefits as defined in Section 1773.1 of the California Labor Code, applicable to the classes of labor to be used for public works such as at the delivery site for the assembly and installation of the equipment or materials under the purchase order. Pursuant to Section 1770 of the California Labor Code, the Department of Industrial Relations has ascertained the general prevailing rate of wages in the county in which the work is to be done, to be as listed in the Department of Transportation booklet entitled General Prevailing Wage Rates. The booklet is compiled monthly and copies of the same are available from the Department of Industrial Relations, Prevailing Wage Unit at www.dir.ca.gov (select Statistics & Research) or (415) 703-4774. The booklet is required to be posted at the job site.

c) The contractor hereby certifies by signing this contract that:

- i) Contractor has met or will comply with the standards of affirmative compliance with the Non-Discrimination Clause Requirements included herein.
- ii) Contractor is aware of the provisions of Section 3700 of the Labor Code that require every employer to be insured against liability for workmen's compensation or to undertake self-insurance in accordance with the provisions of that Code, and contractor will comply with such provisions before commencing the performance of the work of the purchase order.

d) Laws to be Observed

i) Labor

Pursuant to Section 1775 of the California Labor Code the contractor shall, as a penalty to the State or Political subdivision on whose behalf the purchase order is made or awarded, forfeit not more than fifty (\$50.00) for each calendar day, or portions thereof, for each worker paid by him or subcontractor under him, less than the prevailing wage so stipulated; and in addition, the contractor further agrees to pay to each workman the difference between the actual amount paid for each calendar day, or portions thereof, and the stipulated prevailing wage rate for the same. This provision shall not apply to properly indentured apprentices.

Pursuant to Sections 1810-1815 of the California Labor Code, inclusive, it is further agreed that the maximum hours a worker is to be employed is limited to eight hours a day and forty hours a week and the contractor shall forfeit, as a penalty to the State, twenty-five (\$25) for each worker employed in the execution of the purchase order for each calendar day during which a workman is required or permitted to labor more than eight hours in any calendar day or more than forty hours in any calendar week, in violation of California Labor Code Sections 1810-1815, inclusive.

ii) Worker's Compensation Insurance

The contractor will be required to secure the payment of compensation to its employees in accordance with the provisions of Labor Code Section 3700.

iii) Travel and Subsistence Payments

Travel and subsistence payments shall be paid to each worker needed to execute the work, as such travel and subsistence payments are defined in the applicable collective bargaining agreements filed in accordance with Labor Code Section 1773.8.

iv) Apprentices

Special attention is directed to Sections 1777.5, 1777.6, and 1777.7 of the California Labor Code and Title 8, California Administrative Code Section 200 et seq. Each contractor and/or subcontractor must, prior to commencement of the public works contract/purchase order, contact the Division of Apprenticeship Standards, 525 Golden Gate Avenue, San Francisco, CA, or one of its branch offices to insure compliance and complete understanding of the law regarding apprentices and specifically the required ratio thereunder. Responsibility for compliance with this section lies with the prime contractor.

v) Payroll

The contractor shall keep an accurate payroll record showing the name, social security account, and work classification specific and straight time and overtime hours worked by each employee. A certified copy of the employee's payroll record shall be available for inspection as specified in section 1776 of the California Labor Code.

53. CMAS Debarment Certification (Federally Funded Service Contracts Over \$10,000)

When Federal funds are being expended, the prospective recipient of Federal assistance funds is required to certify to the buyer, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

54. CMAS Termination of Contract

- a) The State may terminate this contract at any time upon one-month prior written notice.
- b) If the contractor's GSA Multiple Award Schedule is terminated within the term of the California Multiple Award Schedule, the California schedule shall also be considered to be terminated on the same date.
- c) Upon termination or other expiration of this contract, each party will assist the other party in orderly termination of the contract and the transfer of all assets, tangible and intangible, as may facilitate the orderly, nondisrupted business continuation of each party.
- d) Prior to the expiration of this contract, this contract may be terminated for the convenience of both parties by mutual consent.
- e) This provision shall not relieve the contractor of the obligation to perform under any purchase order or other similar ordering document executed prior to the termination becoming effective.

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55. CMAS Updates and/or Changes

- a) A CMAS amendment is not required for updates and/or changes once the update and/or change becomes effective for the federal GSA schedule, except as follows:
 - i) A CMAS amendment is required when the contract is based on products and/or services from another contractor's multiple award contract and the contractor wants to add a new manufacturer's products and/or services.
 - ii) A CMAS amendment is required for new federal contract terms and conditions that constitute a material difference from existing contract terms and conditions. A material change has a potentially significant effect on the delivery, quantity or quality of items provided, the amount paid to the contractor or on the cost to the State.
 - iii) A CMAS amendment is required for changes to contracts that require Prison Industry Authority (PIA) approval.
- b) A CMAS amendment is required to update and/or change products and services on a non-federal GSA multiple award contract.
- c) A CMAS amendment is not required to update and/or change products and services on Software Volume License Agreements.

56. CMAS Contract Amount

There is no minimum or maximum dollar amount specified by this contract nor is there any guarantee of minimum purchase of contractor's products or services by the State.

57. CMAS Purchase Order Limits

Unless otherwise stipulated in the CMAS contract, orders for Information Technology products and/or services shall not exceed \$500,000 per transaction; orders for non-Information Technology (commodities) products shall not exceed \$100,000 per transaction, and orders for non-Information Technology services shall not exceed \$250,000 per transaction.

58. CMAS No Additional Costs

No additional costs beyond those identified in the contract shall be incurred by the State for obtaining the products and services offered.

59. CMAS Quarterly Reports

Contractors are required to submit a detailed report quarterly to the DGS Procurement Division, CMAS Unit, 707 3rd Street, 2nd Floor, West Sacramento, 95605, Attention: Quarterly Report Processing (IMS Code Z-1). A separate report is required for each contract, as differentiated by alpha suffix (if applicable). Contractors with resellers are responsible for reporting reseller ordering activity. Any report that does not follow the required format or that excludes information will be deemed incomplete.

New schedules for contractors with existing schedules, and extensions or renewals of existing schedules, will be approved ONLY if the supplier has submitted to the CMAS Unit all quarterly reports due. Each quarterly report is required within two weeks of the end of March, June, September, and December of each calendar year. A report is required even when there is no activity.

The report must include the agency name, purchase order number, purchase order date, agency billing code, pre-tax total order cost, agency contact name, address and phone number, and total dollars for the quarter. Tax must NOT be included in the quarterly report, even if the agency includes tax on the purchase order.

60. CMAS Conflict of Terms

The California Multiple Award Schedule terms and conditions shall prevail if there is a conflict between the terms and conditions of the contractor's federal GSA (or other multiple award contract), packaging, invoices, catalogs, brochures, technical data sheets or other documents.

61. CMAS Purchase Orders Funded in Whole or Part by the Federal Government

All contracts (including individual orders), except for State construction projects, which are funded in whole or in part by the federal government may be canceled with 30 days notice, and are subject to the following:

- a) It is mutually understood between the parties that this contract (order) may have been written before ascertaining the availability of congressional appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays which would occur if the contract (order) were executed after that determination was made.
- b) This contract (order) is valid and enforceable only if sufficient funds are made available to the State by the United States Government for the fiscal year during which the order was generated for the purposes of this program. In addition, this contract (order) is subject to any additional restrictions, limitations, or conditions enacted by the Congress or any statute enacted by the Congress which may affect the provisions, terms or funding of this contract (order) in any manner.
- c) It is mutually agreed that if the Congress does not appropriate sufficient funds for the program, this contract (order) shall be amended to reflect any reduction in funds. The department has the option to void the contract (order) under the 30-day cancellation clause or to amend the contract to reflect any reduction of funds.

62. CMAS Conflict of Interest

- a) Current State Employees (Public Contract Code Section 10410):
 - i) No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any State agency, unless the employment, activity or enterprise is required as a condition of regular State employment.

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- ii) No officer or employee shall contract on his or her own behalf as an independent contractor with any State agency to provide goods or services.
- b) Former State Employees (Public Contract Code Section 10411):
 - i) For the two-year period from the date he or she left State employment, no former State officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any State agency.
 - ii) For the twelve-month period from the date he or she left State employment, no former State officer or employee may enter into a contract with any State agency if he or she was employed by that State agency in a policy-making position in the same general subject area as the proposed contract within the twelve-month period prior to his or her leaving State service.

63. CMAS Subcontracting Requirements

Any subcontractor that the CMAS supplier chooses to use in fulfilling the requirements of this contract/purchase order, and which is expected to receive more than ten (10) percent of value of the contract/purchase order, must also meet all contractual, administrative, and technical requirements of the contract/purchase order, as applicable.

64. CMAS Rental Agreements

The State does not agree to:
Indemnify a contractor;

- Assume responsibility for matters beyond its control;
- Agree to make payments in advance;
- Accept any other provision creating a contingent liability against the State; or
- Agree to obtain insurance to protect the contractor.

The State's responsibility for repairs and liability for damage or loss is restricted to that made necessary by or resulting from the negligent act or omission of the State or its officers, employees, or agents.

If the contractor maintains the equipment, the contractor must keep the equipment in good working order and make all necessary repairs and adjustments without qualification. The State may terminate for default or cease paying rent should the contractor fail to maintain the equipment properly.

Personal property taxes are not generally reimbursed when leasing equipment (SAM 8736).

65. CMAS Lease (Lease \$Mart™)

If an agency desires to lease through Lease \$Mart™, the contractor agrees to sell to lessor the assets at the same price as they agree to sell to the State.

66. CMAS Risk of Loss or Damage

The State shall be relieved from all risks of loss or damage to the equipment under this contract prior to delivery and/or installation as defined in the actual purchase order except when such loss or damage is due to fault or negligence of the State.

67. CMAS Noncollusion Affidavit

Contractor hereby certifies that any quotation provided for a CMAS order or project is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the quotation is genuine and not collusive or sham; that the contractor has not directly or indirectly induced or solicited any other contractor to put in a false sham quotation, and has not directly or indirectly colluded, conspired, connived, or agreed with any contractor or anyone else to put in a sham quotation, or that anyone shall refrain from quoting; that the contractor has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix any overhead, profit, or cost element of the quoted price, of that of any other contractor, or to secure any advantage against the public body awarding the contract or anyone interested in the proposed contract; that all statements in the quotation are true; and, further, that the contractor has not, directly or indirectly, submitted its quoted price or any breakdown thereof, of the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company, association, organization, quote depository, or to any member of agent thereof to effectuate a collusive or sham quotation.

68. Union Organizing

Contractor by signing this agreement hereby acknowledges the applicability of Government Code Section 16645 through Section 16649 to this agreement.

- a) Contractor will not assist, promote or deter union organizing by employees performing work on a state service contract, including a public works contract.
- b) No state funds received under this agreement will be used to assist, promote or deter union organizing.
- c) Contractor will not, for any business conducted under this agreement, use any state property to hold meetings with employees or supervisors, if the purpose of such meetings is to assist, promote or deter union organizing, unless the state property is equally available to the general public for holding meetings.
- d) If contractor incurs costs, or makes expenditures to assist, promote or deter union organizing, contractor will maintain records sufficient to show that no reimbursement from state funds has been sought for these costs, and that contractor shall provide those records to the Attorney General upon request.

69. Liquidated Damages

- a) General
In the event that the contractor fails to deliver in accordance with the contract requirements, the parties agree that the delay will interfere with the proper implementation of the State's programs, to the loss and damage of the State. From the nature of the case, it would be impracticable and extremely difficult to fix the actual damages sustained in the event of any such delay. The State and contractor, therefore, presume that in the event of any such delay the amount of damage which will be sustained from a delay will be the amounts set forth in the purchase order or Statement of Work, and the State and the contractor agree that in the

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event of any such delay, the contractor shall pay such amounts as liquidated damages and not as a penalty. Amounts due the State as liquidated damages may be deducted by the State from any money payable to the contractor. The State shall notify the contractor in writing of any claim for liquidated damages pursuant to this paragraph on or before the date State deducts such sums from money payable to the contractor.

b) Delivery Delays

- i) If the contractor does not deliver all the deliverables listed on the purchase order or Statement of Work ready for use in substantial accordance with the contractor's specifications, on or before the Delivery Dates specified in the purchase order or Statement of Work, the contractor shall be liable for liquidated damages in the amounts specified in the purchase order or Statement of Work, in lieu of all other damages for such nondelivery. Liquidated damages shall accrue for each calendar day between the Delivery Date specified and the actual date of the delivery of such deliverables or for 180 days, whichever occurs first. If the contractor fails to provide the software listed in the purchase order or Statement of Work by the specified Delivery Date, but provides suitable substitution of software acceptable to the State, liquidated damages shall not apply to listed software for which substituted software is provided.
- ii) If the State is unable to use the equipment on the installation date because contractor failed to deliver the software listed in the purchase order or Statement of Work by the Delivery Date specified in the purchase order or Statement of Work, and contractor does not furnish suitable substitute software acceptable to the State, liquidated damages for equipment noninstallation shall be paid to the State in lieu of damages for software nondelivery. Such liquidated damages shall apply until the State uses the equipment or until contractor provides the programming aids, program products, or applications which would render the equipment usable, whichever occurs first, but not for more than 180 calendar days.